

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Guidance for the Provision of Real Estate Support to the Formerly Utilized Sites Remedial Action Program and Delegation of Authority to Execute Rights-of-Entry and Acquire Real Property and Interests Therein

1. References:

a. Energy and Water Development Appropriations Act, 1998, Pub. L. No. 105-62, 111 Stat. 1326 (1997).

b. Memorandum, CECW-B, 31 Oct 97, subject: Formerly Utilized Sites Remedial Action Program (FUSRAP) Operations Order (OPORD) 98-01.

c. Letter from Chairmen, House and Senate Subcommittees on Energy and Water Development, Committees on Appropriations, to Secretaries of Energy and Defense dated 6 November 1997.

d. *Uniform Appraisal Standards for Federal Land Acquisitions*, Interagency Land Acquisition Conference (1992).

e. Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs, 49 C.F.R. Part 24.

f. Memorandum, CERE-E, 27 Nov 90, subject: Delegation of Approval Authority for Real Estate Appraisal Reports.

g. Memorandum, CERE-AP, 6 Oct 95, subject: Delegation of Authority to Accept Offers to Sell, Approve Administrative Settlements and Settlement Offers in Condemnation Actions and Establishment of Performance Measures.

h. Office of Federal Procurement Policy, Policy Letter on Inherently Governmental Functions, 57 Fed. Reg. 45,096 (1992).

2. Reference 1a, above, transferred program execution responsibility for the Formerly Utilized Sites Remedial Action Program (FUSRAP) from the Department of Energy to the Army Corps of Engineers. Reference 1b, above, charged Divisions and Districts with responsibility for executing the program. This memorandum is intended to provide guidance on the provision of CERE-AP

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real estate support activities. We have been given an opportunity to demonstrate our creativity, our ability to work in an uncertain environment and respond quickly to change, and our partnering skills. We have imposed relatively few constraints on Districts in order to meet this challenge.

3. District real estate elements shall take appropriate steps to plan the real estate aspects of FUSRAP projects within their Civil Works geographic boundaries. This planning effort should include the identification of project real estate requirements, a determination of whether existing Government rights are sufficient to permit the Corps to construct, operate and maintain the projects, and the development of a strategy to meet any unsatisfied requirements including the development of costs and schedules to a level of detail consistent with the complexity of the project. No Headquarters review or approval of District real estate plans is required. Districts shall execute approved real estate plans in a timely fashion. It is critical that program momentum be maintained. Relevant program data should be entered into the Real Estate Management Information System (REMIS).

4. Chiefs of Real Estate at Major Subordinate Commands (MSC's) and Districts are authorized to execute rights-of-entry which substantially conform to enclosed model (Encl 1). This authority may be further delegated to the section chief level. It is desired that, to the greatest extent practicable, the FUSRAP program be implemented utilizing rights-of-entry and without the necessity for real estate acquisition.

5. Chiefs of Real Estate at MSC's are authorized to approve the acquisition of real property and interests therein in connection with FUSRAP. This authority may be further delegated to District Chiefs of Real Estate. Any real property interests acquired should, in most cases, be temporary and terminate at conclusion of remedial action. Should condemnation of real property interests be required, citation should be made to 33 U.S.C. § 591, 40 U.S.C. §§ 257-258a, and the Energy and Water Development Appropriations Act, 1998, Pub. L. No. 105-62, 111 Stat. 1326 (1997).

6. Where a detailed appraisal of any real property interests to be acquired is required, such interests shall be appraised in accordance with reference 1d, above. It is anticipated, however, that most real property interests required to implement FUSRAP will not require the in-depth analysis and presentation necessary in a detailed appraisal by virtue of their low value or simplicity. *See* 49 C.F.R. §§ 24.102(c), 24.103. Authority to approve appraisals is as delegated in reference 1f, above, or subsequent delegations.

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7. Authority to accept offers to sell, approve administrative settlements and settlement offers in condemnation actions is as delegated in reference 1g, above.

8. Chiefs of Real Estate at MSC's and Districts are authorized to approve payment of nominal consideration for rights-of-entry and licenses required in connection with FUSRAP. The following language may be inserted after "in consideration of" in the first paragraph of the form: "the payment of \$[INSERT AMOUNT], receipt of which is hereby acknowledged, and". Chiefs of Real Estate at MSC's and Districts are authorized to extend existing DOE licenses and access agreements containing terms which, if not contrary to law, are not consistent with USACE policy if deemed reasonable, prudent and in the Government's interest.

9. Our current position is that real property accountability remains with DOE consistent with the expression of legislative intent contained in reference 1c, above. DOE project real estate records have been obtained by the Oak Ridge Transition Team and distributed to the appropriate geographic Districts. Real property records should be returned to DOE upon site closeout.

10. Districts may determine the nature and extent of contract real estate support, if any, to be provided by Bechtel National, Inc. under its existing contract with the Government for projects within their area of responsibility. Districts shall not contract for the performance of inherent Government functions such as appraisal review and approval. See reference 1h, above.

11. Real estate issues which cannot be resolved locally should be elevated through command channels to CERE-AP. Our point of contact for this guidance is Mr. Cribbin at (202) 761-1704.

FOR THE COMMANDER:

Enclosure
as

/s/
B. J. FRANKEL
Director of Real Estate

DISTRIBUTION:
COMMANDER,
GREAT LAKES AND OHIO RIVER DIVISION, ATTN: CELRD-OR-ET-R
MISSISSIPPI VALLEY DIVISION, ATTN: CEMVD-ET-R

NORTH ATLANTIC DIVISION, ATTN: CENAD-ET-R
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DISTRIBUTION (CONT'D):

NORTHWESTERN DIVISION, ATTN: CENWD-MR-ET-A

CECW-B (Augustine)

CEMP-R (Huston)

CECC-T (Simpson)

CECS

DEPARTMENT OF THE ARMY
RIGHT OF ENTRY

(Site Name)

(Tract Number)

The undersigned, hereinafter called the "Grantor," in consideration of the performance of remedial activities under the Formerly Utilized Sites Remedial Action Program by the UNITED STATES OF AMERICA, hereinafter called the "Government," hereby grants to the Government, its agents, employees, representatives, contractors and assigns, an irrevocable right of entry upon the property located at _____, and more particularly described in Exhibit "A" attached hereto, subject to the following terms and conditions:

1. This Right of Entry is granted for purposes of performing surveys and investigations, collecting samples and making test borings, and remediating radiological and chemical contamination of soils, groundwater and structures including, but not limited to, the right to store, move and remove equipment and supplies; excavate and dispose of contaminated soil and backfill with suitable soil and restore the property to its previous condition; construct, operate, maintain, repair, replace, and remove groundwater extraction, treatment and injection systems and monitoring wells; and perform such other work as may be necessary and incident to implementation of the Formerly Utilized Sites Remedial Action Program for a period not to exceed _____ beginning with the date of this instrument.

2. This Right of Entry includes the right of ingress and egress on other lands of the Grantor provided that such ingress and egress is necessary and not otherwise conveniently available to the Government.

3. All tools, equipment, and other property taken or placed upon the land by the Government shall remain the property of the Government and may be removed by the Government at any time within a reasonable period after the expiration of this Right of Entry.

4. The Government shall have the right to patrol and police the land during the period of this Right of Entry.

5. If any action of the Government in the exercise of the rights granted herein results in damage to the real property, the Government will, in its sole discretion, either repair such damage or make an appropriate settlement with the Grantor. In no event shall such repair or settlement exceed the fair market value of the fee simple title to the real property at the time immediately preceding such damage. The Government's liability under this clause is subject to the availability of appropriations for such payment, and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet any deficiencies. The provisions of this clause are without prejudice to any rights the Grantor may have to make a claim under applicable laws for any damages other than those provided for herein.

WITNESS MY HAND AND SEAL this _____ day of _____, 199__.

[Typed Name] (SEAL)

[Typed Name] (SEAL)

Accepted:

UNITED STATES OF AMERICA

By: _____
[Typed Name]
[Title]